

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

David Andersen,
Petitioner-Appellant,

v.

Cass County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 09-15-0054
Parcel No. 300004810001000

On December 1, 2009, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant, David Andersen, was self-represented and submitted evidence in support of his petition. The Cass County Board of Review designated Attorney Jamie Cox, of Willson & Pechacek, P.L.C., Council Bluffs, Iowa, as its legal representative. Both parties participated by telephone. The Appeal Board now having reviewed the record, heard the testimony, and being fully advised, finds:

Findings of Fact

David Andersen, owner of property located at 400 Oak Street, Atlantic, Iowa, appeals from the Cass County Board of Review decision reassessing his property. The real estate was classified residential for the January 1, 2009, assessment and valued at \$40,333; representing \$4362 in land value and \$35,971 in the improvement value. Mr. Andersen protested to the Board of Review on the grounds that the assessment is not equitable under Iowa Code section 441.37(1)(a); that the assessment is for more than authorized by law under section 441.37(1)(b); and that there had been a downward change in value since the last assessment under sections 441.37(1) and 441.35(3). In response to the protest, the Board of Review notified Mr. Andersen that the January 1, 2009, assessment would be

reduced. The Board of Review reassessed the property at \$37,756; representing \$4362 in land value and \$33,394 in the improvement value.

Mr. Andersen then filed an appeal with this Board on the grounds of inequity and over-assessment and seeks \$5394 in relief. Mr. Andersen values the property at \$28,000.

The subject property is a one-story, 1021 square-foot, frame dwelling built in 1880 with a 974 square-foot detached garage, located on a 50 x 100 lot. The subject property is a rental unit that rents for \$325 a month. The tenant has some use of the garage, but the garage is mainly used by the owner who operates a construction business.

Mr. Andersen submitted six properties as evidence that, in his opinion, are comparable to his property. At hearing, Mr. Andersen testified to the condition and type of structure of each of the properties. Mr. Andersen noted that all of these properties were in a two-block area. Mr. Andersen believes the subject property's garage is worth \$9000, the land \$4000 to \$5000, and the dwelling \$14,000 to \$15,000. However, he would accept a total assessed value of \$29,000 to \$31,000 for the property.

Upon cross-examination by the Board of Review, it became clear that Mr. Andersen's comparable properties had not been adjusted to the subject property and may not be comparable. Mr. Andersen's testimony pointed out that five of his comparable property sales had abnormal sale conditions, and one of the properties had not sold recently.

Brenda Nelson, Cass County Assessor, testified on behalf of the Board of Review. Ms. Nelson testified to ten comparable properties, submitted by the Board of Review, as evidence to support that the assessment was equitable and not assessed for more than authorized by law. Ms. Nelson testified that she narrowed the ten properties down to the three most comparable that closely reflect the subject property in age, neighborhood, and construction.

Ms. Nelson testified regarding her assessment practice in the county. She stated that in 2009 she reassessed only a portion of the properties in the county and the subject area was part of the 2009 revaluation. Ms. Nelson testified that after reviewing the evidence for this hearing that she believed the 2009 assessment of the subject property should be \$35,868, versus the current assessed value of \$37,756.

The evidence submitted clearly indicates that the properties submitted by Mr. Andersen as comparables were abnormal sales transactions for the most part, which were not adjusted. We cannot rely on these properties to prove inequity. We find the assessor knowledgeable, and she provided competent information. However, we do not agree with doing a partial reassessment of a class property. This is because "such a policy will cause some taxpayers to pay more than they should in property taxes and others to pay less than the law would require." *Bd. of Supervisors of Pottawattamie County v. Dept. of Revenue*, No. 95 (Iowa Bd. of Tax Rev. Sept. 1, 1976).

Reviewing all the evidence, we find that the comparable properties submitted by Mr. Andersen did not prove his January 1, 2009, assessment is excessive or inequitable. However, the testimony of the Cass County Assessor that the property should be valued at \$35,868 is the best evidence in the record and supports the claim that the property is over-assessed.

Conclusions of Law

The Appeal Board based its decision on the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or

additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. Iowa Code § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. § 441.21.(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are also to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).


To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shriver*, 257 Iowa 575, 133 N.W.2d 709 (1965). The gist of this test is ratio difference between assessment and market value, even though Iowa law now requires assessments to be 100% of market value. § 441.21(1). The properties submitted by Mr. Andersen cannot be used as comparables to challenge the assessment on inequity because most are abnormal and not adjusted.

Mr. Andersen also claimed his property was over-assessed. In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). In this case, we find the best and most reliable evidence supports Andersen's claim. The assessor testified, after hearing Andersen's arguments, that the property should be assessed at a value lower than that which the Board

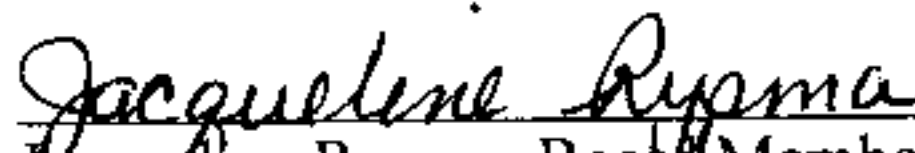
of Review determined. We, therefore, modify the assessment of the Andersen property as determined by the Board of Review. The Appeal Board determines that the property assessment value as of January 1, 2009, is \$35,868; representing \$4362 in land value and \$31,500 in dwelling value.

THE APPEAL BOARD ORDERS that the January 1, 2009, assessment as determined by the Cass County Board of Review is modified.

Dated this 29 day of December, 2009.


Richard Stradley, Presiding Officer


Karen Oberman, Board Chair


Jacqueline Rypma, Board Member

Copies to:

David Andersen
308 Hazel Street
Atlantic, IA 50022
APPELLANT

Jamie Cox
Willson & Pechacek
PO Box 2029
Council Bluffs, IA 51502
ATTORNEY FOR APPELLEE

Dale Sunderman
Cass County Auditor
5 West 7th Street
Atlantic, IA 50022

Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>12-29</u> , 200 <u>9</u>	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	